

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS**

**Honolulu, Hawaii**

**NOV 19 2009**

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** Proposed Rule Amendment OA 09-1  
Request for Public Hearing and Small Business Impact  
Determination: Petition to Amend Title 13, Chapter 5,  
Hawaii Administrative Rules (13-5, HAR) to Designate an  
Undesignated Portion of the State Land Use Conservation  
District into the Resource Subzone

**PETITIONER/  
LANDOWNER:** A Charitable Foundation Corporation (ACF)

**LOCATION:** Pupukea Ahupuaa, Oahu

**TMKs:** (1) 5-9-023: portion of 001  
(1) 5-9-024: 001

**PETITION AREA:** Approximately ( $\approx$ ) 28.579 acres

**SUBZONE:** Undesignated

**DESCRIPTION OF AREA AND CURRENT LAND USE:**

TMK: (1) 5-9-023: portion of 001 and (1) 5-9-024: 001 is situated on the ridge above the northern rim of Waimea valley within Pupukea ahupuaa, Koolauloa District along the boundary of Waimea ahupuaa and Pupukea ahupuaa. This boundary is also the boundary between Koolauloa and Waialua Districts as well (**Exhibit 1**).

Currently, tour operator, Happy Trails utilizes a well-established horseback riding trail system that traverses portions of the subject area.

**Existing Land Use Classification**

A State Land Use District Boundary Amendment Petition was filed on March 15, 2005 with the State Land Use Commission (SLUC) to reclassify 28.759 acres of the subject area from the State Agricultural District to the State Conservation District and to reclassify  $\approx$  5.219 acres of adjacent parcel 022 from the Conservation to the Agricultural State Land Use District. The SLUC Doc #A05-758 Boundary Amendment was approved on April 21, 2006. The reclassified Conservation District land that is the petitioned area currently lies within an undesignated subzone.

### **Geographic Characteristics**

A small plateau is formed along the top of the ridge that gradually descends toward the sea at varying gradients between 5-15%. To the immediate north and east of the site is Pupukea residential/agricultural community. To the west is a fallow and undeveloped agricultural parcel. Mauka and to the east are the highland Conservation/watershed land. Upon either side of the plateau the topography falls off more abruptly. To the south, the plateau carries over into TMK: (1) 6-1-002:022 that lies within the Limited and General subzone (**Exhibit 2**). To the north, the site descends into Kalahopele Gulch. Elevations range from about 200-feet above msl at the makai end to 750-feet msl at the mauka end of the site.

### **Soils**

The *Agricultural Lands of Importance in the State of Hawaii (ALISH) Map*, prepared by the State Department of Agriculture identified portions of the project area as “prime agricultural land.” The project area contains Helemano silty clay; Manana Silty Clay; and Wahiawa Silty Clay soils. These soils may be used for pasture, woodland, and wildlife habitat. In areas with less than a 25% slope, these soils may be used for crops such as sugarcane and pineapple.

### **Hydrological Characteristics**

The project site is situated within the Kawaihoa aquifer system, within the critical wastewater disposal area, and in the Board of Water Supply’s “No Pass Zone.” The purpose of the “No Pass Zone” is to protect underground drinking water aquifers from contamination that could result from the ground disposal of wastewater.

There are no surface waters or wetlands in the project area. The site is located within Zone D, areas in which flood hazards are undetermined, but possible and Zone X, areas to be determined to be outside 0.2% annual chance flood plain.

### **Biological Characteristics**

#### *Flora*

A botanical survey was conducted in December 2004. According to the report, three distinct vegetation types were observed: 1) Ironwood trees, seedlings and saplings; 2) grass species such as Hilo grass, Henry’s crab grass, foxtail grass, Guinea grass, sourgrass and low flowering plants such as *Calypocarpus viralis* Less. and brass buttons; and 3) Weedy scrub. The only native species found on this site was a single vegetative Bidens (Kookoolau) plant. The project area is now dominated by alien plant species and it is believed that there are no known threatened or endangered plant species within the project area (**Exhibit 3 & 4**).

#### *Fauna*

A faunal survey was conducted in March 2005. 6 bird species were observed, the migratory golden plover (Kolea); spotted doves; zebra doves; mynahs; Brazilian

cardinals; and house sparrows. With the exception of the Kolea, all of the birds are introduced species.

Mongoose, feral cats and mice were not observed, but are likely to be present. Consultation with the U.S. Fish and Wildlife Service indicated that there are no invertebrates or other endangered species of concern in the area.

### **Historical Characteristics**

Commercial agriculture began in Pupukea as early as the 1860's with the production of sugarcane. Pineapple production began in the uplands in 1910 when Honolulu Pineapple Co. acquired a lease for lands surrounding the Puu o Mahuka Heiau. Cultivation of pineapple continued until the 1960's. Avocados, apples and sisal were also grown. The land was later seeded with eucalyptus, paperbark and ironwoods for the creation of watershed areas. Additionally, because it is known that the project area was utilized for commercial agriculture during the 1900s, it is believed that significant subsurface deposits are unlikely to exist in an undisturbed fashion.

Given the location of the site, it is unlikely that the land was used for habitation. The project area was more likely used for collection of raw materials and possible dry land agriculture. As the area was used for pineapple crops, it is possible that items associated with commercial agriculture could be encountered.

Several cultural sites are located within the Pupukea and Waimea ahupuaa. Puu O Mahuka Heiau is located northwest of the project site. This Heiau is on the National and State Historic Places and is one of the most significant and largest Heiau on Oahu.

A Cultural Impact Assessment was prepared in August 2002. It is believed that habitation in the project area would have been unlikely prior to western contact due to the location of the Heiau on the ridge. Habitation would not occur in such close proximity to the Heiau.

### **Scenic & Visual Resources**

The undesignated subzone area located inland is neither visible from Kamehameha Highway nor from publicly accessible portions of Waimea Valley. The project area is over one mile inland from the highway and obscured by the valley ridge. On site, along the rim of the valley, the property offers sweeping views of the valley and Waimea bay.

Historically the property also provides a backdrop to interpret the Heiau in its setting adjacent to Waimea valley and the significant cultural view to Kauai (connection of Wailua).

### **Hazardous and Toxic Materials**

A Phase I Environmental Site Assessment has been completed to investigate past and present land uses for the property and surrounding area to determine if the potential for

hazardous materials contamination exists. According to the application, no hazardous wastes or substances were observed during the site reconnaissance.

### **Natural Hazard Potential**

According to the application, there are no apparent hazards posed by rock, soil or other slope movement that would affect land suitability. There are no residences or other potentially affected uses of concern in the area below the ridge. It appears that a stream and gulch separate the private residents that appear to be on a ridge across from the subject area. There has not been an assessment of rock fall hazard at the subject location.

### **Infrastructure Evaluations**

Currently access to the subject area is provided via Maulukua Road. Electrical power, telephone service and municipal water is available within close proximity to the project area. The project site is located in the critical wastewater disposal area and is unsewered. The subject area lies above the Department of Health's Underground Injection Control Line and in the Board of Water Supply's "No Pass Zone." The purpose of the, "No Pass Zone," is to protect underground drinking water aquifers from contamination which could result from the ground disposal of wastewater.

### **PROPOSED ACTIONS OF THE PETITIONER:**

The petitioner is requesting designation of the Resource subzone to the undesignated project area. The primary objective of the reclassification from Agricultural to the Conservation District is to preempt the future development of the site that overlooks Waimea Valley. The designation will allow the applicant or future landowners to apply for land uses within the Conservation District.

The proposed action to designate the undesignated Conservation District land into the Resource subzone shall not involve any development or construction of improvements. The petitioner would like to eventually apply for consolidation and resubdivision of the project area.

### **Review of Property Characteristics in Relation to Subzone Objectives**

As described in §13-5-13, HAR, the objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. Specifically, the Resource Subzone shall encompass:

- ❑ Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;
- ❑ Lands suitable for growing and harvesting of commercial timber or other forest products;
- ❑ Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;
- ❑ Lands and state marine waters seaward of the upper reaches of the wash of waves, usually evidenced by the edge off vegetation or by the debris left by the wash of

waves on shore to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

Although the subject area is undeveloped land with introduced species the property is part of the Pupukea Ridge Preservation Project that has strong community support and promotes open space. The property provides passive recreational opportunities such as pedestrian and equestrian trails.

**Alternative Considered**

Under the 'No Action' alternative, the land would be identified as lying within the Conservation District, 'undesignated subzone' and no identified land uses could be applied for.

**STAFF ANALYSIS:**

Pursuant to Chapter 13-5, Hawaii Administrative Rules (HAR), any change to Conservation District Subzone boundaries must be made by amending Chapter 13-5, HAR. Statutes and rules which govern the process by which amendments of Chapter 13-5, HAR, may be made include:

- A. §91-2 through 91-7, Hawaii Revised Statutes (HRS);
- B. §2, Act 168, Session Laws of Hawaii 1998;
- C. §183 (c)-4, HRS;
- D. §13-1, Subchapter 3, Hawaii Administrative Rules (HAR); and
- E. §13-5-5, HAR.

Petitions to amend the administrative rules are reviewed by the Legislative Reference Bureau and the Department of the Attorney General. The draft version of the proposed rule change shall be submitted to those agencies for review. In general, in order to take effect, proposed rule amendments must obtain departmental and gubernatorial authorization for both public hearing and final approval.

**Authorization for Public Hearing:**

The first major step to amend the administrative rules is to hold a public hearing. The request for public hearing is the subject of this staff submittal. Should the Board of Land and Natural Resources (Board) approve the subject request, the Department would forward the request for public hearing to the Governor for approval. At the Board's discretion, the Board may modify the proposed rule change at this time.

**Approval/Disapproval:**

After public hearing, the second major step would be to seek the Board's discretion to forward the proposed rule change to the Governor for approval. The Board may also

modify the proposed rule change at that time. Both the Legislative Reference Bureau and the Department of the Attorney General would review, and the Department of the Attorney General approves as to form, the proposed rule change prior to forwarding the proposed rule change to the Governor for decision.

**State Policies and Procedures:**

The Governor of the State of Hawaii has issued Administrative Directive No. 09-01 to guide policy and procedures for the adoption, amendment or repeal of administrative rules. The Governor directs that petitions for administrative rule changes address certain policy topic areas. By this submittal, staff proposes that the general content of this petition be transmitted to the Governor's Office along with any approved request for public hearing.

**Chapter 343, HRS, Requirements:**

In conformance with Title 11, Chapter 200, Hawaii Administrative Rules and Chapter 343 Hawaii Revised Statutes, a Final Environmental Assessment was filed in September 2005 and the State Land Use Commission issued a Finding of No Significant Impact for the Boundary Petition for the designation of Agricultural lands to the Conservation District on October 25, 2005.

**Section 2 of Act 168, Session Laws of Hawaii 1998, The Hawaii Small Business Regulatory Flexibility Act:**

Staff is of the opinion that the proposed rule amendment will not impact or affect small business. Therefore, no "Small Business Impact Statement" or "Small Business Statement" is required.

**DISCUSSION:**

The subject request is to take the proposed subzone designation to public hearing and to determine if the proposed action would have an affect on small business. The proposed subzone designation would not affect any small business. Currently, tour operator, Happy Trails, utilizes a well-established horseback riding trail system that traverses portions of the subject area. A subzone designation would not curtail this use.

Staff believes that the area is suitable and appropriate for a Resource subzone designation. However, a public hearing should be held to collect public comment prior to any recommendation being made.

**STAFF RECOMMENDATION:**

That the Board of Land and Natural Resources:

1. Approve the petitioner's request to process the subject petition to amend Chapter 13-5, Hawaii Administrative Rules;

2. Determine that the proposed rule amendment will not impact or affect small business;
3. Authorize the forwarding of a request for public hearing to the Governor, State of Hawaii, on the proposed rule amendment;
4. Upon executive approval, publish public hearing notice; and
5. Upon executive approval, appoint a representative of the Board of Land and Natural Resources as public hearing master for the proposed rule amendment's public hearing.

Respectfully submitted,



K. Tiger Mills, Staff Planner  
Office of Conservation and Coastal Lands

Approved for Submittal:



**LAURA H. THIELEN**, Chairperson  
Board of Land and Natural Resources



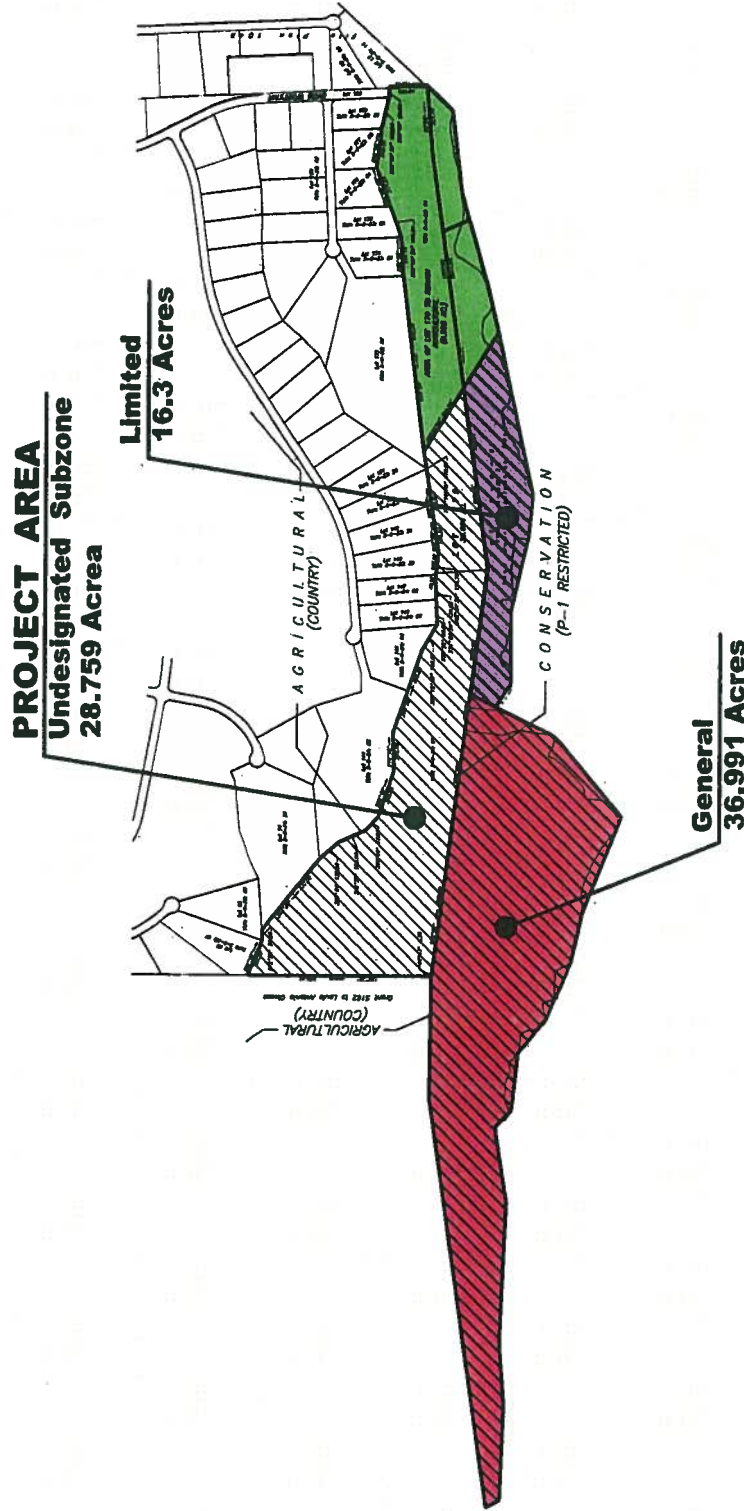
**Water**

Land

**EXHIBIT 1**



# EXHIBIT 2



- Agricultural District
- Conservation District Subzones**
- General
- Limited



0 500 1000 2000

Scale in Feet



**WILSON OKAMOTO**  
CORPORATION  
ENGINEERS • PLANNERS

PUPUKEY RIDGE PRESERVATION PROJECT

CONSERVATION SUBZONES



Photo 1-N



Photo 2-E

## EXHIBIT 3



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ENGINEERS/PLANNERS/CONSULTANTS

PUPUKEA RIDGE PRESERVATION PROJECT

PHOTOS – PROJECT SITE





Photo 3-ENE



Photo 4-E

EXHIBIT 4



WILSON OKAMOTO  
CORPORATION  
ENVIRONMENTAL CONSULTANTS

PUPUKEA RIDGE PRESERVATION PROJECT

PHOTOS – PROJECT SITE